

REMARKS

This responds to the Office Action mailed on November 15, 2005, and the references cited therewith. In this response no claims were amended, canceled or added. As a result, claims 1-8 and 10-25 remain pending in this application. Reconsideration of this application is requested in view of the following remarks is requested.

§103 Rejection of the Claims

A. Rejection: Claims 10-15, 17-19 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka.

B. Response: In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claim 10 recites a “...drive belt adapted to engage a **drive sprocket having n number of driving portions**...and driving lugs attached to the interior surface of the drive belt, each of the driving lugs having at least a first sidewall making an angle with respect to the pitch line of the track, the angle being in the range of [90 - (360/2n)] plus or minus 5 degrees.” (Emphasis added) The angle between the driving lug sidewalls and the interior surface of the drive belt is related to the number of driving portions on the drive sprocket. It will be appreciated that this is set forth in the claim (see bolded portion above) and is also supported in the specification at page 21, lines 1-15). The Nagorcka reference does not set forth such a recitation. There is no teaching or suggestion of an angle between the sidewall of the driving lug and the interior surface of the belt being dependent on the number of driving portions of a drive

sprocket, much less being within the range defined by [90 - (360/2n)] plus or minus 5 degrees. Therefore, the Nagorcka reference fails to teach or suggest all the claim limitations. In addition, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to yield the teaching of the invention as claimed. The reason set forth by the Examiner fails to set forth a suggestion or motivation for modifying the reference. The Examiner's reason seems reasonable enough, however, it is off base. Simply put, the Examiner sets forth a reason unrelated to the limitation in claim 10. The Examiner contends that it "...would be obvious that the belt of Nagorcka would have an angle of less than 90 degrees, and that **angle would be defined by the number of drive lugs on the belt.**" (See top of page 5 of the Office Action dated 11/15/05—Emphasis added). The Examiner does not state that it would have been obvious to define the angle by the number of driving portions on the drive sprocket, as recited in the claim. As a result, the Examiner fails to set forth a proper *prima facie* case of obviousness since the Nagorcka reference fails to teach or suggest all the claim limitations and fails to set forth a suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to yield applicant's invention. As a result, claim 10 overcomes the rejection under 35 USC § 103(a) as being unpatentable over Nagorcka.

Claims 11–15, 17-19 and 24 depend from claim 10 and include all the limitations of claim 10 by their dependency. As a result, claims 11–15, 17-19 and 24 also overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Nagorcka reference.

In addition, the Examiner rejected claims 10-15, 17-19 and 24 is based solely on the Nagorcka reference. Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in the Nagorcka reference. Since all the elements of the claim are not found in the Nagorcka reference, Applicant requests that the Examiner cite a reference that includes a drive belt having an angle between the sidewall of the driving lug and the interior surface of the belt being dependent on the number of driving portions of a drive sprocket. In the alternative, Applicant requests that the Examiner place an affidavit of personal knowledge in the file for any elements the Examiner contends are

commonly used arrangement in the industry. Still another alternative is that the Examiner indicates any taking official notice of the missing elements. Applicant respectfully objects to the reason set forth for obviousness set forth in the Office Action of November 15, 2005 or to any taking of official notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03.

C. Rejection: Claims 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka as applied to claims 10-15, 17-19 and 24 above, and further in view of Witt (U.S. 6,062,662).

D. Response: In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claims 21-23 overcome the Examiner's rejection under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka as applied to claims 10-15, 17-19 and 24 above, and further in view of Witt (U.S. 6,062,662) since the Examiner fails to make out a proper *prima facie* case of obviousness with respect to claim 10. Simply put, the Nagorcka reference does not teach or suggest that the angle between the sidewall of the driving lug and the interior surface of the belt is dependent on the number of driving portions of a drive sprocket. Furthermore, the Nagorcka reference also fails to teach or suggest that the angle between the sidewall of the driving lug and the interior surface of the belt is within the range defined by [90 - (360/2n)] plus or minus 5 degrees. The Witt reference also fails to teach or suggest that the angle between the sidewall of the driving lug and the interior surface of the belt is dependent on the number of driving portions

of a drive sprocket. Since neither reference teaches this limitation, the combination of these references fails to teach or suggest all the claim limitations.

In addition, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to yield applicant's invention that includes that the angle between the sidewall of the driving lug and the interior surface of the belt is dependent on the number of driving portions of a drive sprocket.

Therefore, the combination of Nagorcka and Witt does not teach or suggest all the elements of claim 10 or the claims depending therefrom, namely claims 21-23. As mentioned previously, there also does not appear to be any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings to yield applicant's invention. As a result, claims 21-23 overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Nagorcka and Witt references.

Allowable Subject Matter

Claims 1-8, 16, and 25 were allowed.

Claim 20 was objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 20 has been left unchanged since the applicant feels claim 10, from which claim 20 depends indirectly, is in allowable form.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested: The Examiner is invited to telephone Applicant's attorney at (612) 373-6977 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

CARY SAFE ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6977

Date 2/15/06
By Richard E. Billion
Richard E. Billion
Reg. No. 32,836

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15th day of February, 2006.

Name

Amy Moriarty

Signature

